IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11200 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESHKUMAR MAHENDRABHAI MEKWAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11200 of 2000

MR PRADEEP PATEL for Petitioner No. 1

Shri Nagesh Sood, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/07/2004

CAV JUDGEMENT

In the present Special Civil Application under Article 226 of the Constitution of India, the petitioners had challenged the legality and validity of the order/communication dated 20th October 2000 by which they were directed to vacate the premises which was being used by the original-allottee, Rakeshkumar Mahendrabhai Mekwan for the purpose of running telephone booth.

2. As the original-petitioner, Rakeshkumar Mahendrabhai Mekwan was a handicapped he moved an application before the respondent authority for granting permission to allow him to put STD Telephone Booth in the BJ Medical College. It is pertinent to note that BJ Medical College Campus is under the control of Additional Director, Medical Education & Research and competent authority for granting permission to instal the STD/PCO booth was the Additional Director, Medical Education & Research. However, on receipt of the aforesaid application from the original-petitioner as he was a handicapped person and requisite permission from the Additional Director, Medical Education & Research was not received at the relevant point of time the office of the Dean, BJ Medical College, Ahmedabad, granted permission to the original-petitioner for installing STD/PCO booth with certain terms and conditions. One of the conditions, more particularly condition No.7, is that the said allotment is for a temporary period only. It seems that thereafter the original-petitioner was permitted to instal the STD/PCO booth and certain additional telephone lines for STD calls by the Department of Telecommunication was also granted. It seems that subsequently requisite permission from the Additional Director, Medical Education & Research was not granted and on the basis of the communication dated 20th October 2000 from the Office of Additional Director, Medical Education and Research the original-petitioner was directed to vacate the premises within the period of two days. The said communication dated 20th October 2000 is the subject matter of the present Special Civil Application.

3. During the pendency of present Special Civil Application, the original-applicant Rakeshkumar Mahendrabhai Mekwan has died on 18th September 2001 leaving behind him petitioners No. 1/1 to 1/4 as heirs and legal representatives of deceased Rakeshkumar. Pursuant to the order passed by this Court dated 2.7.2004 passed in Civil Application No. 5045 of 2004, the petitioner No.1/1 to 1/4 are joined as petitioners being heirs and legal representatives of deceased Rakeshkumar Mahendrabhai Mekwan, original-petitioner and original allottee. It is pertinent to note that so far as applicant No. 1/1 is concerned, she is a married sister and as such she cannot be as such the heir and legal representative of the deceased Rakeshkumar Mahendrabhai Mekwan. Petitioner No. 1/4 is father who was serving in Government department and petitioner No. 1/2 is brother of deceased Rakeshkumar Mahendrabhai Mekwan. From the

record, it seems that at present the telephone booth is being run by the sister and brother-in-law of deceased Rakeshkumar Mahendrabhai Mekwan.

4. Shri Pradeep Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that as such there is no cause for the respondents for removing the petitioners and directing the petitioners to vacate the premises which was being run by Rakeshkumar Mahendrabhai Mekwan after obtaining necessary permission from the Dean. He has vehemently submitted that in fact the space was allotted to the original petitioner by the respondent No.2 Dean of BJ Medical College and therefore it is not open for the respondents to direct the original petitioners to vacate the premises. He has also further submitted that in fact by communication dated 20th October 2000 the original-petitioner was directed to vacate the premises within the time of 48 hours which is absolutely illegal and most arbitrary.

5. Shri Sood, the learned AGP appearing on behalf of the respondents, has opposed the present Special Civil Application. He has submitted that permission to instal the STD/PCO booth was granted to the original-petitioner considering the fact that he was handicapped and that as such the competent authority for granting the requisite permission is the Additional Director, Medical Education & Research, Gandhinagar, and as the original-petitioner was a handicapped person and at the relevant time requisite permission from the Office of Additional Director, Medical Education & Research could not be received, the office of respondent No.2 granted permission to the petitioner for installing the STD/PCO booth with certain terms and conditions. He has also submitted that one of the conditions on which the permission is granted is that it is for a temporary period meaning thereby that the petitioner can continue to run the booth only till requisite permission from the office of Assistant Director, Medical Education & Research is obtained. He has further submitted that in fact no permission from the Additional Director, Medical Education & Research was granted and on the contrary the petitioner was directed to vacate the premises in question and hence the impugned communication/order was sent to the original-petitioner. He has further submitted that even on consideration of the fact that the original-allottee Rakeshkumar Mahendrabhai Mekwan who was allotted the space for installing the booth on the ground that he was handicapped has died, the cause for which the space was allotted for granting the permission for installing the booth does not survive and therefore he

requested to dismiss the present Special Civil Application.

6. Heard the learned advocate appearing for the parties. As such the original-petitioner as well as his heirs do not have any right to continue to run the telephone booth in the campus of BJ Medical College. By communication dated 25/26-9-1997, the original-petitioner was permitted to instal the STD/PCO booth inside the campus of BJ Medical College for a temporary period. The said permission was granted looking to the fact that the original-petitioner was a handicapped and that the requisite permission from the office of Additional Director, Medical Education & Research could not be received at the relevant point of time. Therefore, even the original-petitioner had no right to continue with the STD/PCO booth for an indefinite period. The Additional Director, Medical Education & Research, considering the facts and circumstances and also the fact that there is a nuisance, has directed the respondent No.2 to see that the STD/PCO booth is removed and that the original-petitioner vacates from the premises. It is an admitted position that there is no requisite permission from the office of Additional Director, Medical Education & Research allowing the original-petitioner to instal the STD/PCO booth inside the campus of BJ Medical College. It is also an admitted position that the competent authority for granting requisite permission is the Additional Director, Medical Education and Research and not the respondent No.2. Therefore, even the permission which was granted by the respondent No.2 was without any authority under the law and that too the said permission which was granted by the respondent No.2 was for a temporary period. Under the circumstances, even the original-petitioner could not have any right to continue with the STD/PCO booth for an indefinite period. When the original-petitioner had no right, then certainly the petitioners who are the heirs and legal representatives of deceased Rakeshkumar Mahendrabhai Mekwan have also no right to continue. Under the circumstances, it cannot be said that there is any illegality committed by the respondents in directing the original-petitioner to vacate the premises in question which was being used for running of STD/PCO telephone booth. It is true that by order dated 20th October 2000 only two days' time was granted. However, by now more than 4 years have passed and therefore the grievance raised on behalf of the petitioner that only 2 days was granted does not survive.

7. Even considering the subsequent event also, the present Special Civil Application is required to be

dismissed. During the pendency and final disposal of the present Special Civil Application the original-allottee Rakeshkumar Mahendrabhai Mekwan has died. He was granted the permission to instal the telephone booth but the said permission was granted considering the fact that Rakeshkumar Mahendrabhai Mekwan was handicapped person. On his death, the space which was allotted to him cannot be continued to be retained by his heirs. It is pertinent to note that father of the petitioner was serving in Government department. If a particular space is allotted and permission is granted to run the telephone booth considering the fact that the original-allottee was a handicapped person, on his death his heirs cannot be continued to run the booth for which permission was granted for a temporary period only. As stated hereinabove, petitioner No. 1/1 is sister of the deceased. Therefore, she cannot be said to be even the heir and legal representative of deceased Rakeshkumar Mahendrabhai Mekwan. It is also pointed out by the learned AGP appearing on behalf of the respondents that since long and even at present also as the telephone booth is being run in the campus nuisance is caused to the respondents. Under the circumstances also, permission to continue with the STD/PCO booth in the BJ Medical College campus cannot be continued. In view of the aforesaid facts and circumstances of the case, more particularly in view of the fact that even the deceased original-petitioner was not having a right to continue with the STD/PCO telephone booth for an indefinite period and the permission was granted by the Dean (though he was not having any authority) for a temporary period only, it cannot be said that the order dated 20th October 2000 is in any way erroneous and/or illegal which calls for interference by this Court in exercise of powers under Article 226 of the Constitution of India.

8. For the reasons stated hereinabove, there is no substance in the present Special Civil Application. Notice is discharged. The ad-interim relief granted earlier stands vacated forthwith.

[M.R. Shah, J.]

rmr.

At this stage, the learned advocate appearing on behalf of the petitioner prays to continue the interim relief granted earlier. In the facts and circumstances of the case the interim relief, granted earlier, is directed to be continued upto 2nd August 2004.

[M.R. Shah, J.]

rmr.